

# **Eightfold Real Estate Capital, L.P.**

## **Disclosure Brochure**

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This brochure provides information about the qualifications and business practices of Eightfold Real Estate Capital, L.P. (“Eightfold” or the “Company”). If you have any questions about the contents of this brochure, please contact us at [rwolpert@eightfoldcapital.com](mailto:rwolpert@eightfoldcapital.com) or by calling (305) 503-4054. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority. Additional information about Eightfold is also available on the SEC’s website at: [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## Material Changes

*This is Eightfold's first Disclosure Brochure so there are no material changes.*

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## Advisory Business

Eightfold is a Delaware limited partnership organized in March 2012, is primarily owned (70%) and controlled by SW7 Partners, L.P. which is owned by in equal parts by: Robert Cherry, Larry Golinsky, Ronald E. Schrager, Brian A. Tageson, Michael E. Wheeler, Kevin W. Wodicka, and Randolph J. Wolpert (collectively the “Principals”). Four private funds managed or formed by Abrams Capital Management, L.P. (“Abrams”), own the remaining interest (30%) in Eightfold.

Eightfold currently provides discretionary investment advisory services and management services to four private pooled investment vehicles: Eightfold Real Estate Capital Fund I, L.P. (“Fund I”), Eightfold Real Estate Capital Fund II, L.P. (“Fund II”), Eightfold Real Estate Capital Fund III, L.P. (“Fund III”) and Eightfold Structured Real Estate Fund I, L.P. (“Structured Fund”) (each a “**Fund**” and collectively “**Funds**”). The only investors in Funds I and II and the Structured Fund are Principals and Abrams entities and those Funds are closed and are no longer in their investment period. Therefore, this Brochure contains information primarily regarding Fund III.

The Company provides discretionary investment advisory services to the Funds, which invest primarily in commercial real estate debt products. Fund III will be investing solely in commercial mortgage-backed securities (“CMBS”), primarily below investment grade and unrated CMBS. Eightfold does not generally provide advice with respect to other types of investments. In addition, Eightfold does not tailor advisory services to the individual needs of the limited partners of the Funds.

As of March 31, 2013 the Company managed approximately \$387 million on behalf of the Funds. This includes \$51 million of commitments from the Structured Fund which did not close until April 25, 2013

## Fees and Compensation

Compensation received by Eightfold is composed primarily of management fees based on (1) committed capital during the investment period of a Fund and (2) a percentage of the invested capital after the investment period has ended. Management fees may vary by Fund, see each Fund’s offering documents for specific fee information.

Each Fund typically pays an Eightfold affiliate serving as General Partner an incentive distribution once the amounts distributed to limited partners equal their capital contribution plus a specified preferred return. See Fund offering documents for specific incentive fee structures. Eightfold may waive or reduce the management and/or incentive fee for certain investors, primarily those affiliated with Eightfold.

In addition to the management fee and incentive allocation discussed above, the Funds are typically responsible for fees and expenses relating to, among other things:

- organizational expenses including travel, legal, accounting, filing and other expenses in connection with the offer and sale of interests in the Funds;

- the charges and expenses of the Fund's operations, including maintaining the Fund's accounts at any banks, custodians or depositories, bookkeeping and accounting services, and all expenses associated with the preparation and distribution of financial statements, tax returns, and reports to any limited partner;
- all costs related to the Fund's operations including, (i) fees and other out-of-pocket expenses directly related to the investigation of investment opportunities, whether or not consummated, and whether incurred before or after the formation of the Fund, (ii) costs and expenses related to the acquisition, ownership, management, operation, financing, hedging or sale of investments, (iii) costs and expenses of meetings with or reporting to limited partners, (iv) fees and expenses for accounting, auditing, research, consulting insurance and legal services, including fees and expenses paid to outside accountants, appraisers, insurance brokers, legal or insurance service providers and other agents and consultants, (v) costs related to risk management services and insurance for the Fund, Eightfold and its affiliated General Partner, and the Limited Partners in connection with the performance of activities related to the fund, (vi) costs relating to the Funds indemnification of indemnified parties, including costs of any litigation and any judgments or settlements, (vii) extraordinary expenses associated with the operation of the Fund and its investment activities, (viii) interest on, and fees and expenses arising out of, all borrowings of the Fund, (ix) the out-of-pocket charges and expenses for third-party administration of the Fund, (x) expenses incurred in connection with liquidating the Fund, (xi) any taxes, fees, or other governmental charges levied against the Fund and all expenses incurred in connection with any tax audit, investigation, assessment, settlement or review of the Fund and (xii) costs associated with making, monitoring, managing or disposing of investments;
- all other expenses not specifically provided for that are incurred by Eightfold or its affiliated General Partner in connection with organizing any subsidiary, operating the Fund, or performing the duties of the General Partner under this Agreement other than (i) ordinary and usual office overhead expenses, furniture, fixtures and office equipment of Eightfold or the affiliated General Partner, and (ii) compensation of the employees of Eightfold or the affiliated General Partner.

Please see each Fund's offering documents for further detail.

## **Performance-Based Fees and Side-by-Side Management**

As detailed in the **Fees and Compensation** section above, an Eightfold affiliate serves as General Partner to each Fund and charges fees that are based on the realized gains of Fund assets. Although specific fee rates may vary, the fee structures for each of the Funds is similar, thus minimizing the risk that one or more Funds may receive favorable treatment in order to maximize income earned by the Company. Further, generally only one Fund will be in its investment period at any given time, further minimizing the risk that Eightfold may favor one Fund over another.

## **Types of Clients**

Eightfold provides investment advisory services to the Funds, which are unregistered private investment companies. Fund III requires a minimum investment of \$5,000,000, although this minimum may be waived by Eightfold in its discretion.

## **Investment Strategies, Methods of Analysis, and Risk of Loss**

As mentioned in **Advisory Business** above the following relates primarily to Fund III.

### Investment Strategies and Methods of Analysis

Eightfold will attempt to maximize returns and mitigate risk in its transactions through intensive due diligence prior to the acquisition of its target investments, followed by thorough and disciplined management of assets after they are acquired. Eightfold's credit analysis prior to the acquisition of investments is based on an extensive underlying property and loan level due diligence process. Eightfold's funds typically invest in commercial mortgage backed securities ("CMBS") which are bonds backed by pools of commercial loans.

### **Underwriting**

Eightfold, utilizing both internal and contracted resources conducts independent analyses of loan models and expected cash flows in order to arrive at independent cash flow and value for each underlying asset. Each investment is evaluated based on Eightfold's review of the underlying assets and potential investments may be renegotiated or restructured in order to meet Eightfold's underwriting and return criteria.

### **Control**

Eightfold's typical CMBS investment affords it the right to control certain decisions on each underlying loan as the representative of the controlling class in the CMBS transaction ("Controlling Class"). Eightfold conducts, on behalf of the Funds, ongoing active investment management process through its loan surveillance effort in order to identify future risks in each CMBS pool. Additionally, the Principals have substantial experience in working out loans, and as Controlling Class representative, have the ability to appoint the special servicer (who is responsible for managing loans that go into default or become delinquent during their term or at maturity) and oversee the activities of the special servicer which it believes may positively influence the recovery rate on the underlying commercial mortgage loans, enhancing returns for its investors.

### Risks of Loss

Acquiring interest in a Fund involves a number of risks. An investment in a Fund may be deemed a speculative investment and is not intended as a complete investment program. It is designed for sophisticated investors who fully understand and are capable of bearing the risk of an investment in the Fund. No guarantee or representation is made that the Fund will achieve its investment objective or that limited partners will receive a return of their capital.

All investing involves a risk of loss and the investment strategy offered by Eightfold could lose money over short or even long periods. The description below is a brief overview of different risks related to Eightfold's investment strategy and types of securities. However, please see each Fund's offering documents for additional detailed information regarding the risk factors relating to that Fund.

- ◆ **Uncertain Asset Valuation.** The Funds' investments will be presented on a "fair value basis." For certain investments, it is unlikely that readily available price quotations will exist. Accordingly, limited partners must rely on the judgment of Eightfold for valuing and pricing the Funds' investments. A valuation is only an estimate of value and is not a precise measure of realizable value. Ultimate realization of the value of an asset depends to a great extent on economic and other conditions beyond the control of a Fund. Valuations do not necessarily represent the price at which an investment would sell since market prices of investments can only be determined by negotiation between a willing buyer and seller. If a Fund were to liquidate a particular investment, the realized value may be more than or less than the appraised value of such asset.
- ◆ **Long-Term Investment Horizon; Uncertain Timing for Asset Sales and Financings.** The Funds have a multi-year, long term investment horizon. Although Eightfold expects most investments to generate current cash flow, it is possible that certain expected cash flow will occur only after the partial or complete payment in respect of the mortgages on the commercial property ("Commercial Mortgage Loans") underlying the CMBS in which the Funds invest, delaying the return to limited partners of a Fund. It is possible that, at a Fund's termination, the Fund may not be able to sell or finance the investments that it has purchased and, therefore, will make "in-kind" distributions. Further, it is possible that the maturity terms of the Commercial Mortgage Loans underlying a Fund's CMBS investments get extended, resulting in a longer period of time in which the related CMBS are outstanding and potentially reducing the expected yields thereon.
- ◆ **Illiquidity and Restricted Securities.** Most investments will be illiquid and without a readily available resale market. In addition, certain of the Structured Finance Securities that a Fund will acquire may include interests that have not been registered under applicable securities laws, resulting in a prohibition against transfer, sale, pledge or other disposition of those securities except in a transaction that is exempt from the registration requirements of, or otherwise in compliance with, applicable laws. Accordingly, a Fund's ability to respond to changes in economic and other conditions may be limited.
- ◆ **Lack of Diversification.** Lack of asset class diversification or having a limited number of investments can expose a Fund to significant loss. Since the Funds expect to acquire portfolio assets in discrete transactions, the Funds' risks will likely be concentrated in a limited number of assets during its initial investment period. In addition, limited partners have no assurance that as a Fund continues to invest the degree of diversification in the Fund's investments will increase, with respect to asset category, geographic location or other risk exposure.
- ◆ **Leverage.** The amount of borrowings and leverage which the Fund may have outstanding, and/or to which its investments may be subject, at any time may be large in relation to its capital and available capital commitments. Although the use of leverage may enhance returns, it will also substantially increase the risk and potential magnitude of loss. For example, under certain declining market conditions, a Fund's lenders could make margin calls that require a

Fund to post additional cash or collateral as security for a loan, thereby resulting in significant impairment of value. Because many borrowings may be cross-collateralized, it is likely that a Fund could experience concurrent foreclosures of multiple financed assets, accompanied by attendant losses upon lender liquidations.

- ◆ **Embedded Leverage in Structured Assets.** The Fund expects to invest in subordinated tranches of Structured Finance Securities with “embedded” leverage arising in classes of securities or financial structures that carry junior priorities with respect to payments generated by a collateral asset or pool of assets. Hence, such subordinated tranches have inherent leverage, and derive enhanced returns, from the senior tranches – at the cost of an elevated exposure to the performance of an underlying collateral asset or asset pool. The embedded leverage of assets that constitute structured instruments could increase a Fund’s exposure to leverage-related risks and could compound a Fund’s exposure to loss.
- ◆ **High Risk Investments.** The Funds may acquire assets secured by real property interests, including distressed commercial mortgages, liens on high-risk collateral, or notes or pledges made by high-risk borrowers, including sub-prime and non-performing loans. Such assets generally carry below-investment grade credit ratings, or are not rated at all. These assets and/or the loans underlying these types of assets may be in default or may have a greater than normal risk of future defaults, delinquencies, bankruptcies or fraud losses. There can be no assurance that the assets will perform, the borrowers will pay as expected, or, if defaulted, that the underlying assets will be able to be foreclosed upon and liquidated in a cost effective manner. In addition there are risks arising from mismanagement or a decline in the value of collateral, contested foreclosures, bankruptcy of the debtor, claims for lender liability, violations of usury laws and the imposition of common law or statutory restrictions on a Fund’s exercise of contractual remedies for defaults on such investments.
- ◆ **Credit Ratings.** Credit ratings of debt securities which may constitute Fund investments, components of Fund investments or securities issued by commercial real estate collateralized debt obligations, represent the rating agencies’ opinions regarding their credit quality and are not a guarantee of quality. Rating agencies attempt to evaluate the safety of principal and interest payments and do not evaluate the risks of fluctuations in market value, therefore, they may not fully reflect the true risks of an investment. Also, rating agencies may fail to make timely changes in credit ratings in response to subsequent events, so that an issuer’s current financial condition may be better or worse than a rating indicates. Consequently, credit ratings of Structured Finance Securities and other debt securities will be used by the Fund, and should be used by others, only as preliminary indicators of investment quality, if at all. In addition, the Fund generally will not be permitted to disclose any private ratings of Structured Finance Securities or other debt securities to investors. Further, any credit ratings on the Fund’s assets are often subject to ongoing evaluation by credit rating agencies, and the Fund cannot assure that any such ratings will not be changed or withdrawn by a rating agency in the future if, in the rating agency’s judgment, circumstances warrant. If rating agencies assign a lower-than-expected rating or reduce or withdraw, or indicate that they may reduce or withdraw, their ratings of a Fund’s investments in the future, then the value of these investments could significantly decline, which would adversely affect the value of a Fund’s investment portfolio and could result in losses to investors upon disposition.
- ◆ **Regulation.** A Fund may invest in financial instruments subject to ongoing services provided by financial institutions regulated by national and state supervisory entities. Such regulators

have broad discretion to issue or change regulations, or issue guidance, which can significantly affect the way such service-providers conduct their businesses and monitor risk. In the event that a regulatory change impacts an institution providing service to a financial instrument owned by the Fund, it is possible that the value of the Fund's investment could be harmed.

- ◆ **Environmental Risks on Real Estate.** In the event the Fund owns or becomes an owner of real estate, through purchase, foreclosure or otherwise, the Fund may be exposed to risk of loss from environmental claims arising with respect to such real estate, and the potential losses may exceed the Fund's investment therein. Additionally, changes in environmental laws or in the environmental condition of an asset may create liabilities that did not exist at the time of acquisition and that could not have been foreseen.
- ◆ **Insurance; Casualty Losses; Uninsurable Losses.** With respect to the Commercial Mortgage Loans underlying the CMBS in which the Fund invests, the applicable lender may require that borrowers obtain and maintain customary liability and casualty insurance for the properties that serve as collateral for such loans, and that borrowers maintain such insurance in the event the Fund acquires such properties through foreclosure, deed in lieu of foreclosure, or otherwise. However, there can be no assurance that insurance will be available or sufficient to cover any such risks. Insurance against certain risks, such as earthquakes, floods, or terrorism may be unavailable, unavailable at a reasonable cost, available in amounts that are less than the full market value or replacement cost of investments or subject to a large deductible. There can be no assurance that the particular risks which are currently insurable will continue to be insurable at a reasonable cost. If a Fund suffers an uninsured loss with respect to a particular property, then all or a substantial portion of its investment in the relevant property may be lost. In addition, all of the assets of a Fund may be at risk in the event of an uninsured liability to third parties.
- ◆ **Third-Party Servicer.** Most investments will comprise securities collateralized by pools of loans or receivables for which certain management functions - such as, for example, payment collection and deposit, escrow and impound collections, lender consents, record-keeping or reporting with respect to payment collections and deposits - are performed by asset servicers, including master services and special servicers. In the event that a servicer for one of the Fund's assets experiences operational or financial difficulties, the Fund's investment could experience asset deterioration or payment delay, reduction or suspension, thereby compromising the asset's value.
- ◆ **Hedging Transactions.** The Funds may, but are not obligated to, utilize financial instruments to hedge certain of its investments and the interest rate risk associated therewith. There can be no assurance that a Fund will hedge when appropriate or choose the correct hedge if it does hedge. The use of hedging transactions involves certain risks, including: (i) the possibility that the market will move in a manner or direction that would have resulted in gain for a Fund had a particular hedging transaction not been utilized, in which case a Fund's performance would have been better had the Fund not engaged in the hedging transaction; (ii) the risk of imperfect correlation between the risk sought to be hedged and the hedging instrument used; and (iii) potential illiquidity for the hedging instrument used, which may make it difficult or costly for the Fund to close-out or unwind a hedging transaction. The Fund's ability to hedge may be constrained by the requirements of CFTC Rule 4.13(a)(3) (which imposes certain limitations



on an investment vehicle's ability to utilize commodities, including interest rate swaps) in connection with the Fund's exemption from registration with the CFTC.

- ◆ **Counterparty Risk.** It is expected that certain investment purchases and dispositions will transpire in private or "over-the-counter" markets. These transactions may include forward trades, options, swaps and financing trades, bonds borrowed and bonds loaned. The participants in such markets are typically not subject to the same credit evaluation and regulatory oversight as members of "exchange-based" markets. Differing market standards for counterparty credit evaluation may expose a Fund to the risk that a counterparty will not complete or settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (irrespective of whether it is bona fide or not), counterparty default, or inability to perform, causing a Fund to suffer a loss. Such "counterparty" risk is accentuated for contracts with longer maturities or where the Fund has concentrated its transactions with a particular counterparty or group of counterparties. None of Eightfold, the affiliated General Partners or the Funds has any internal credit function which evaluates the creditworthiness of its counterparties, there can be no assurance that any such assessment that is made will be accurate, and there can be no assurance that the Fund will transact with only high quality counterparties.
- ◆ **Third-Party Involvement.** Some of the investments may be made as a partner or in joint venture with the seller of an asset, an affiliate of the seller, an investor unaffiliated with the Fund or its affiliates, or other persons. These investments may involve risks not inherent in other types of investment vehicles, including, for example, the possibility that such third-party entities may become insolvent and bankrupt, have economic or business interests or goals inconsistent with those of the Fund or otherwise be in a position to take action inconsistent with the Fund's objectives, desires or policies. Actions taken by bankrupt entities could subject a Fund to liabilities larger than, or other than, those anticipated.
- ◆ **Contingent Liabilities on Disposition of Investments.** In connection with the disposition of an investment, the Fund may be required to make certain representations and warranties about such investment. The Fund may also be required to indemnify the purchasers of such investment in case any such representations and warranties are inaccurate. These arrangements may create contingent liabilities of a Fund, for which the General Partner may establish reserves or escrow accounts or for which investors may need to return prior distributions to the Fund.
- ◆ **Subordination of Investments Generally.** The Funds' investments will be in subordinated CMBS. These investments will generally be subordinated to the senior obligations of the underlying property or issuer, either contractually or inherently due to the nature of the securities. In addition, these securities may have limited liquidity. Adverse changes in an underlying borrower's financial condition and/or in general economic conditions may impair the ability of the borrower to make payments on the subordinated securities and cause it to default more quickly with respect to such securities than with respect to the borrower's senior obligations.
- ◆ **Structured Finance Securities.** "Structured Finance Securities" are securities that entitle the holders thereof to receive payments that depend primarily on the cash flow from or sale proceeds of a specified pool of assets, either fixed or revolving, that by their terms convert into cash within a finite time period, together with rights or other assets designed to assure the

servicing or timely distribution of proceeds to holders of such securities. Structured Finance Securities in which the Fund may invest include CMBS and Real estate CDO Securities. Holders of Structured Finance Securities bear various risks: credit risks, liquidity risks, interest rate risks, market risks, operations risks, structural risks and legal risks.

- ◆ **Specific Risks Relating to CMBS.** The Structured Finance Securities in which the Funds may invest are expected to consist of CMBS that are secured by Commercial Mortgage Loans having a multi-family or commercial use, such as shopping malls, other retail space, office buildings, industrial or warehouse properties, hotels, self-storage, parking lots, nursing homes and senior living centers. In addition to the risks described above, the Commercial Mortgage Loans underlying CMBS are subject to particular risks, including lack of standardized terms, shorter maturities than residential mortgage loans and payment of all or substantially all of the principal only at maturity rather than through regular amortization of principal. Additional risks may be presented by the type and use of a particular commercial property (e.g., hospitals, nursing homes, hospitality properties and certain other property types). Commercial property values and net operating incomes are subject to volatility, which may result in the net operating income becoming insufficient to cover debt service on the related mortgage loan. Furthermore, the net operating income from and value of any commercial property is subject to various risks, including changes in general or local economic conditions and/or specific industry segments; declines in real estate values; declines in rental or occupancy rates; changes in interest rates, real estate tax rates and other operating expenses; changes in governmental rules, regulations and fiscal policies; weather and other acts of God; terrorist threats and attacks and social unrest and civil disturbances.

The market value of CMBS generally will fluctuate with, among other things, changes in prevailing interest rates, general economic conditions, the condition of certain financial markets, developments or trends in any particular industry and the financial condition of the obligors with respect to the Commercial Mortgage Loans underlying the CMBS.

The Fund will bear the risk of loss on any CMBS it purchases. To the extent third parties have been contracted to provide credit enhancement, the Fund will be dependent in part upon the creditworthiness and claims paying ability of the insurer and the timeliness of reimbursement in the event of a default in the underlying obligations. Further, the insurance coverage for various types of losses is limited in amount and losses in excess of the applicable limitations would consequently be borne by the Fund. Additional risks of investing in CMBS reflect the special risks of investing directly in commercial real estate. This may be especially true in the case of CMBS secured by, or evidencing an interest in, a single mortgage loan or a relatively small or less diverse pool of mortgage loans. Further, the process of servicing CMBS is also more complicated than the servicing of residential mortgage-backed securities, and difficulties encountered in servicing may cause a rating agency to reevaluate or downgrade the credit quality of an issue during its life. In such event, the Fund could realize a loss on its investment.

- ◆ **Risks Inherent in Investing in Subordinate CMBS.** Below-investment grade CMBS support and are subordinate to the higher rated senior securities in the CMBS transaction. Please see *Subordination of Investments* above.

The Fund will attempt to underwrite its investments on a “loss-adjusted” basis, which projects a certain level of performance. However, there can be no assurance that this underwriting will

accurately predict the timing or magnitude of such losses. To the extent that this underwriting has incorrectly anticipated timing or magnitude of losses, limited partners may be exposed to low or negative returns. The Fund anticipates that some mortgage loans will default. Under such circumstances, cash flows of investments held by the Fund will be adversely affected since any reduction in the mortgage payments or principal losses on liquidation of any mortgage loan are applied first to the most subordinate class outstanding of each CMBS transaction.

There may be occasions when the Manager will seek to dispose of selected holdings of the Fund. Non-rated or below investment grade CMBS generally are not actively traded and may not provide the Fund with liquidity of investment. Therefore, it may be difficult or impossible to sell the Fund's securities at a price that the Manager deems acceptable.

Realized losses on CMBS and trust expenses generally will be allocated to the most subordinated class of securities of the securitization. Accordingly, to the extent any CMBS is or becomes the most subordinated class of securities of the securitization, any delinquency or default on any underlying mortgage loan may result in shortfalls, realized loss allocations or extensions of its weighted average life and will have a more immediate and disproportionate effect on such CMBS than on the related senior classes. Even if a class is not the most subordinate class of securities, there can be no assurance that the subordination offered to such class will be sufficient on any date to offset all losses or expenses incurred by the underlying pool of loans. A Fund may suffer reductions in the amount of interest paid to it as a holder of the high yield CMBS.

The right to receive payments of interest on any date on the classes of CMBS held by the Fund will be subordinate to other more senior classes of CMBS and the rights of certain third parties to be reimbursed for certain expenses, and related payments to the Fund will be made only to the extent funds held by the underlying trust are sufficient to make such payments on such date. In addition, generally, no distributions of principal will be made until the aggregate principal balance of each of the corresponding senior classes of CMBS has been reduced to zero and, in other cases, all or a disproportionate amount of principal distributions will be made to the holders of more senior classes of CMBS for a specified period of time. The holders of the most subordinate classes of CMBS, which may be subordinate to the classes of CMBS held by the Fund, will be the Controlling Class and generally will control the exercise of remedies in connection with such CMBS. Such exercise of rights and remedies by a holder of subordinate classes may be in conflict with the interests of the more senior classes of CMBS and may result in less favorable results for the Fund's investments.

- ◆ **Certain Risks Related to Rake Bonds.** "Rake" bonds are subject to many of the risks described above under *Risks Inherent in Investing in Subordinate CMBS* and typically rank junior in priority to the senior tranche in the related commercial real estate loan. A rake bond is a loan-specific security backed by a subordinate participation interest in a first mortgage loan ("B note"), or the junior component of a single commercial real estate loan.

Generally, the underlying instruments with respect to rake bonds include: (i) in the case of a rake bond backed by a B note, an intercreditor agreement, and (ii) in the case of a rake bond backed by the non-pooled subordinate component of a commercial real estate loan, the

pooling and servicing agreement pursuant to which the underlying commercial real estate loan is componentized.

The only source of funds available to make distributions on rake bonds will be from payments or other collections (or advances in lieu thereof) on or in respect of the related B note or the non-pooled subordinate component of the commercial real estate loan. This lack of diversification may result in losses that are substantially more severe than would result in the case of an investment held by the Fund backed by a pool containing multiple commercial real estate loans or individual commercial real estate whole loans.

Although allocation of payments received from the underlying obligor may vary from deal to deal, such payments generally are allocated pursuant to the underlying instruments first to pay interest and principal (or, a *pro rata* share of principal) with respect to the senior tranche (or, in the case of *pari passu* interests in a senior tranche, to each such *pari passu* interest) and then to pay interest and principal with respect to the rake bond. Notwithstanding any such allocation, after the occurrence and during the continuation of an event of default under the underlying instruments and certain other similar circumstances, the rake bonds generally are not entitled to receive any payments of principal or interest unless and until the related senior tranche is paid in full. Additionally, any losses and expenses, including losses of principal or interest, non-recoverable advances, interest on advances and special servicing compensation generally are borne first by the rake bond and then by the related senior tranche.

- ◆ **Grantor Trust.** Certain investments acquired by the Fund may be owned directly or indirectly by the Fund through one or more grantor trusts (collectively, the “Grantor Trust”) created under a Standard Terms of Trust (“Standard Terms of Trust”) pursuant to which a bank or other entity is expected to act as the trustee. Instead of directly owning any such investment deposited in the Grantor Trust, the Fund will own a grantor trust pass-through certificate (“Grantor Trust Certificate”) representing a 100% ownership interest in such investment deposited into a Grantor Trust. Because a Grantor Trust Certificate will generally be entitled to receive payments that depend on the cash flow in respect of the underlying investment included within a Grantor Trust, a Grantor Trust Certificate will be subject to risks similar to those with respect to the underlying investment. Any losses suffered on the investments included in a Grantor Trust will decrease amounts distributable in respect of a Grantor Trust Certificate and, in turn, on the underlying investment and will likely significantly reduce the liquidation value of such Grantor Trust Certificate.
- ◆ **Real Estate CDO Securities.** Real estate CDO securities are, generally, limited recourse obligations of the issuer thereof payable solely from the collateral owned by such issuer or the proceeds thereof. The holders of real estate CDO securities must rely solely on distributions on the underlying collateral or proceeds thereof for payments in respect thereof. If distributions on the underlying collateral are insufficient to make payments on the CDO securities, no other assets will be available for the payment of such deficiency and following realization of the collateral debt securities, the obligations of such issuer to pay such deficiency shall be extinguished.

The underlying collateral of the real estate CDO securities is subject to credit, liquidity and interest rate risks. Such assets may consist of loans, structured finance securities and other debt instruments, which may be rated either as investment grade or below investment grade

(or of equivalent credit quality). The lower rating of below investment grade loans reflects a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the issuer to make payments of principal or interest.

There is a limited, liquid secondary market for many of the real estate CDO securities which the Fund may purchase and the lack of such an established, liquid, secondary market may have an adverse effect on the market value of such real estate CDO securities and the Fund's ability to dispose of them.

Real estate CDO securities are also subject to interest rate risk. The underlying collateral of an issuer of real estate CDO securities may bear interest at a fixed or floating rate while the real estate CDO securities issued by such issuer may be required to bear interest at a floating rate. As a result, there could be an interest rate or basis mismatch as between the real estate CDO securities and floating rate collateral underlying such real estate CDO securities as the interest rate on such floating rate collateral may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the real estate CDO securities. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact such issuer's ability to make payments on the real estate CDO securities.

The CMBS underlying any real estate CDO securities are expected to have the risks and characteristics similar to the risks and characteristics described above under *Specific Risks Relating to CMBS*.

- ♦ **Special Risks Relating to Commercial Mortgage Loans.** Commercial Mortgage Loans underlying CMBS have certain distinct risk characteristics. Mortgage loans on commercial properties generally lack standardized terms, which may complicate their structure and increase due diligence costs. Commercial real estate properties tend to be unique and are more difficult to value than residential real estate properties. In addition, commercial real estate properties, particularly industrial and warehouse properties, are generally subject to relatively greater environmental risks than non-commercial properties and to the corresponding burdens and costs of compliance with environmental laws and other regulations.

Commercial Mortgage Loans also tend to have shorter maturities than residential mortgage loans and are generally not fully amortizing, which means that they may have a significant principal balance or "balloon" payment due on maturity.

Commercial Mortgage Loans generally are non-recourse to borrowers. In the event of foreclosure on a Commercial Mortgage Loan, the value at that time of the collateral securing the Commercial Mortgage Loan may be less than the principal amount outstanding on the Commercial Mortgage Loan plus the accrued but unpaid interest thereon. In addition, any Commercial Mortgage Loans that are recourse to the applicable borrower or a guarantor of such borrower's obligations are subject to additional risks relating to the financial circumstances and creditworthiness of such borrower or guarantor.

Commercial Mortgage Loans are also subject to the effects of (i) the ability of tenants to make lease payments, (ii) the ability of a property to attract and retain tenants, which may in turn be

affected by local conditions such as oversupply of space or a reduction in demand for rental space in the area, the attractiveness of properties to tenants, competition from other available space and the ability of the owner to pay leasing commissions, provide adequate maintenance and insurance, pay tenant improvement costs and make other tenant concessions, (iii) interest rate levels and the availability of credit to refinance such loans at or prior to maturity, (iv) compliance with regulatory requirements and applicable laws, including environmental controls and regulations, and (v) increased operating costs, including energy costs and real estate taxes. Also, there may be costs and delays involved in enforcing rights of a property owner against tenants in default under the terms of leases with respect to commercial properties and such tenants may seek the protection of the bankruptcy laws which can result in termination of lease contracts. In addition, while commercial properties generally will carry comprehensive liability and casualty coverage, such coverage may not provide full protection for the value of the underlying property and may not protect against all casualty losses, including damage due to floods, earthquakes, hurricanes and terrorism.

If the properties securing the mortgage loans do not generate sufficient income to meet operating expenses, debt service, capital expenditure and tenant improvements, the obligors under the mortgage loans may be unable to make payments of principal and interest in a timely fashion. Income from and values of commercial properties are also affected by such factors as the quality of the property manager, applicable laws, including tax laws, interest rate levels, the availability of financing for owners and tenants and the impact of and costs of compliance with environmental controls and regulations.

- ◆ **Prepayments.** The Commercial Mortgage Loans underlying the CMBS may be subject to prepayment. If prevailing rates for similar Commercial Mortgage Loans fall below the interest rates on such Commercial Mortgage Loans, prepayment rates would generally be expected to increase. Most of the Commercial Mortgage Loans underlying the CMBS may have lockout periods and/or defeasance periods during which prepayment is prohibited or prepayment penalties, premiums or defeasance features to be paid upon a prepayment. However, certain of such Commercial Mortgage Loans permit prepayment after such lockout periods or the periods for such prepayment penalties or premiums have expired. Prepayments on Commercial Mortgage Loans are also affected by the value of the related mortgaged property, the borrower's equity in the mortgaged property, the financial circumstances of the borrower, fluctuations in the business operated by the borrower on the mortgaged property, competition, general economic conditions and other factors.
- ◆ **Investment in Troubled Assets.** The Fund may make investments in CMBS that are backed by non-performing or other distressed debt interests, including sub-prime and non-performing loans, which are secured directly or indirectly by real estate. Such assets generally carry below-investment grade credit ratings, or lack credit ratings altogether. By nature, these assets and/or the loans underlying these types of assets have a greater than normal degree of financial risk and there can be no assurance that the Fund's rate of return objectives will be realized or that there will be any return of capital from such investments. Furthermore, troubled assets present a higher than normal risk of future borrower defaults, delinquencies, bankruptcies or fraud losses. In addition to the risks of borrower default, the collateral may be mismanaged or otherwise decline in value during periods in which a special servicer of the Fund's CMBS is seeking to obtain control of the underlying real estate. It is possible that a special servicer may find it necessary or desirable to foreclose on collateral securing one or more real estate loans

underlying the CMBS purchased by the Fund. The foreclosure process can be lengthy and expensive. Bankruptcy laws may delay the ability of the Fund to realize on collateral for loan positions held by it or may adversely affect the priority of such loans through doctrines such as equitable subordination or may result in a restructure of the debt through principles such as the “cramdown” provisions of the bankruptcy laws.

- ◆ **Insolvency Considerations.** Structured Finance Securities and other debt securities held by the Fund may be subject to various laws enacted in the home country of the issuer of such debt securities for the protection of creditors. Insolvency considerations will differ depending on the country in which each issuer is located and may differ depending on whether the issuer is a non-sovereign or a sovereign entity. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an issuer of debt securities, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the such debt security and, after giving effect to such indebtedness, the issuer (i) was insolvent, (ii) was engaged in a business for which the remaining assets of such issuer constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, subordinate such indebtedness to existing or future creditors of the issuer or recover amounts previously paid by the issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. There can be no assurance as to what standard a court would apply in order to determine whether the issuer was "insolvent" after giving effect to the incurrence of the indebtedness constituting the debt securities, or that, regardless of the method of valuation, a court would not determine that the issuer was "insolvent" upon giving effect to such incurrence. In addition, in the event of the insolvency of an issuer of a debt security, payments made on such debt security could be subject to avoidance as a "preference" if made within a certain period of time (which may be as long as one year and one day) before insolvency.

In addition, if an issuer of a debt security is the subject of a bankruptcy proceeding, payments to the Fund with respect to such debt security may be delayed or diminished as a result of the exercise of various powers of the bankruptcy court including the following: (i) an "automatic stay," under which the Fund will not be able to institute proceedings or otherwise enforce its rights against the issuer or obligor with respect to such debt security without permission from the court, (ii) conversion by the bankruptcy court of such debt security into more junior debt or into an equity obligation of the issuer thereof or obligor thereon, (iii) modification of the terms of the debt security by the bankruptcy court, including reduction or delay of the interest or principal payments thereon and (iv) grant of a priority lien to a new money lender to the issuer of, or obligor on, the debt security.

- ◆ **Lender Liability Considerations; Equitable Subordination.** In recent years, a number of judicial decisions in the United States have upheld the right of borrowers to sue lenders or bondholders on the basis of various evolving legal theories (collectively, termed “lender liability”). Generally, lender liability is founded upon the premise that an institutional lender or bondholder has violated a duty (whether implied or contractual) or good faith and fair dealing owed to the borrower or issuer or has assumed a degree of control over the borrower or issuer resulting in the creation of a fiduciary duty owed to the borrower or issuer or its other creditors or shareholder. Although the Fund does not intend to engage in conduct that it

expects would form the basis for a successful cause of action based upon lender liability, the potential for such a cause of action exists.

Insofar as subsidiaries of the Fund or investments are formed under the laws of foreign jurisdictions, the laws of such foreign jurisdictions may impose liability upon lenders or bondholders under factual circumstances similar to those described above, with consequences that may or may not be analogous to those described above under United States federal and state laws.

Additional details about the methods of analysis, investment strategies, and risks associated with the Funds are set forth in each Fund's offering memorandum.

## **Disciplinary Information**

Eightfold and its management personnel have not been involved in any legal or disciplinary events in the past ten years that would be material to a client or investor's evaluation of the Company or its management personnel.

## **Other Financial Industry Activities and Affiliations**

As mentioned in **Advisory Business** above, Eightfold is partially-owned by private funds managed by Abrams. In addition, Abrams will own a significant partnership interest in Fund III as a limited partner. While Abrams does not play an active role on Eightfold's investment management or in its day-to-day operations, Eightfold's management team may nonetheless be influenced by Abrams' equity stake in Eightfold and its significant capital commitments across all of the Funds. Eightfold also manages other pools of capital for Abrams, some of which may hold interests which are not completely aligned with the interests of Fund III, including for example securities of a different seniority to those held within the same issuance by Fund III. While the rights and obligations of the different securities are typically governed by and put in place at the time of initial issuance of such securities, direct or indirect conflicts of interest may nonetheless be present or arise as between Fund III and Eightfold's management of Funds I and II and capital managed on behalf of Abrams. In addition, should there be adverse developments relating to Abrams, whether or not related to Eightfold or a Fund, or an adverse development in the relationship between Abrams and Eightfold, this could adversely affect a Fund with respect to its reputation finances, resources or otherwise.

Eightfold organizes and sponsors the Funds. Affiliated entities of Eightfold serve as the General Partners of, and control, the Funds. Eightfold or its affiliated entities are responsible for all decisions regarding portfolio transactions of the Funds and have full discretion over the management of the Funds' investment activities.

Eightfold Real Estate Advisors LLC, a wholly-owned subsidiary of Eightfold, acts as a consultant on various real estate matters including, but not limited to, advising borrowers, owners and/or investors on restructuring loans. Typically only a subset of Eightfold Principals performs work for Eightfold Real Estate Advisors LLC.



# Code of Ethics, Personal Trading, and Participation or Interest in Client Transactions

## *Code of Ethics and Personal Trading*

Eightfold permits its employees to engage in personal securities transactions. To avoid any potential conflicts of interest involving personal trades, Eightfold has adopted a Code of Ethics (“Code”), which includes policies and procedures relating to insider trading and personal securities transactions. Eightfold’s Code requires, among other things, that the Company’s employees comply with the spirit and the letter of the federal securities laws and the rules governing the capital markets. Employees are expected to adhere to the highest standards of care with respect to any potential conflicts of interest with the Funds and/or Fund investors and may not benefit at the expense of a client

Eightfold’s Code also requires employees to: (1) pre-clear certain personal securities transactions, (2) report personal securities transactions on at least a quarterly basis, and (3) provide Eightfold with a detailed summary of holdings (both initially upon commencement of employment and annually thereafter) over which the employee has a direct or indirect beneficial interest.

A copy of Eightfold’s Code will be provided to any investor upon request. Please contact the CCO, Randolph Wolpert at [rwolpert@eightfoldcapital.com](mailto:rwolpert@eightfoldcapital.com) or (305) 503-4054 to request a copy of the Code.

## *Participation or Interest in Client Transactions*

Eightfold generally does not recommend to clients, or buy or sell for client accounts, securities in which the Company or a related person has a material financial interest. However, as mentioned above under **Other Financial Industry Activities and Affiliations**, Abrams may hold interests which are not completely aligned with the interests of the Fund(s), including for example securities of a different seniority to those held within the same issuance by the Fund(s). While the rights and obligations of the different securities are typically governed by and put in place at the time of initial issuance of such securities, direct or indirect conflicts of interest may nonetheless be present or arise as between the newest Fund and Eightfold’s management of its earlier funds and capital managed on behalf of Abrams.

## **Brokerage Practices**

Eightfold engages in very few public securities transactions on behalf of the Funds given the Company’s focus on real estate investments and CMBS in particular. However, as part of its fiduciary duty to clients, Eightfold has an obligation to seek the best price and execution of transactions when Eightfold is in a position to direct brokerage transactions. To the limited extent Eightfold transacts in securities it intends to select brokers based upon the broker’s ability to provide best execution for the Funds (that is, it seeks the best net price considering all relevant circumstances). Eightfold is generally authorized to make the following determinations, subject to the Fund’s investment objectives and restrictions, without obtaining prior consent from the relevant Fund or any of their limited partners: (1) which securities or other instruments to buy or

sell; (2) the total amount of securities or other instruments to buy or sell; (3) the executing broker or dealer for any transaction; and (4) the commission rates or commission equivalents charged for transactions. In the event that the Company's strategy results in more active trading in Fund portfolios, Eightfold will consider implementing a more formal execution review process.

Eightfold intends to acquire CMBS from private originators of, or investors in, mortgage loans, including mortgage bankers, commercial banks, finance companies, investment banks and other entities. Wherever possible, Eightfold seeks to engage sellers in negotiated transactions rather than to enter into competitive bid situations.

In the unlikely event of an error in the investment or trading process, Eightfold shall take steps to ensure that the error is corrected as soon as possible, and with as minimal an impact to the Funds as possible. Absent willful misconduct, fraud, gross negligence, or bad faith, however, Funds will not be reimbursed should there be a loss as a result of a trade or investing error. The Chief Compliance Officer ("CCO"), in conjunction with the other Principals, shall determine the appropriate course of action with respect to any trade or investing errors.

Eightfold will not enter into formal soft dollar arrangements, but may receive products or services from originators and other counterparties, including capital introduction services, that to the best of the Company's knowledge are generally made available to all institutional clients doing business with these counterparties. These products and services are made available to Eightfold on an unsolicited basis and without regard to transaction costs paid by the Funds or the volume of business the Company directs to these counterparties. Eightfold does not consider client referrals when selecting a counterparty.

Typically only one Fund with a specific investment strategy is actively investing capital or disposing of an investment at any given time, so Eightfold does not need to make allocation decisions regarding investments or disposition opportunities between multiple Funds.

## **Review of Accounts**

The Funds' investments are subject to regular review by investment personnel. The investment decision-making process generally includes informal, collaborative discussions on an ongoing basis. The investments made by the Funds are generally private, illiquid and long-term in nature. Accordingly, the Fund review process is not directed toward a short term decision to dispose of securities

Eightfold provides each limited partner with audited financials of the Fund in which they invest within 120 days following the end of the fiscal year of the applicable fund, and annual tax information for the completion of income tax returns. Quarterly unaudited financials along with an estimated valuation of the fund's assets are also provided. In addition, a monthly summary report of investments is provided.

## **Client Referrals and Other Compensation**

Eightfold does not compensate any third party for client or investor referrals.

With approval from a Fund's Advisory Committee, the General Partner of a Fund may be entitled to receive transaction fees, such as acquisition, disposition, financing, breakup fees or other similar fees in connection with the operation of the Fund. All such fees received by the General Partner from third parties, after reimbursement of any related Partnership Expenses incurred by the General Partner or Eightfold, shall be offset against the management fee payable to Eightfold (as detailed in the **Fees and Compensation** section above).

## **Custody**

Eightfold has the ability to direct the actions of the Funds, including the ability to access and direct the flow of the Funds' cash and securities. As a result, Eightfold is deemed to have custody of client assets.

The Company does not take or maintain physical custody of the Funds' cash or securities, and conducts all business operations in such a way that Fund cash and securities, other than privately offered securities, are preserved in the safekeeping of independent qualified custodians. Fund investors will not receive statements from such custodians. Rather, each Fund is subject to an annual audit and audited financial statements shall be distributed to each limited partner of the Funds. The audited financial statements will be prepared in accordance with generally accepted accounting principles and will be distributed within 120 days of each Fund's fiscal year end.

## **Investment Discretion**

As outlined in Fund offering documents and investment management agreements, Eightfold has full discretionary authority over each of the Funds. As permitted by a Fund's Limited Partnership Agreement, Eightfold may agree with investors in the Funds to waive or modify the application of any provision of the investment terms applicable to such investor in a "side letter" or in any other manner, without obtaining the consent of any other investors in such Fund.

## **Voting Client Securities**

The Funds primarily make investments that typically do not issue proxies. In the rare instance that Eightfold should receive a proxy (or exercise equivalent rights, such as certificate holder consent rights), Eightfold will vote each proxy in accordance with its fiduciary duty to the Funds. However, Eightfold does not abide by any specific proxy voting instructions conveyed by an limited partner with respect to the Funds' securities.

The Company's complete proxy voting policy and procedures and proxy voting record are available to investors upon request. Please contact Randolph Wolpert, the CCO, at [rwolpert@eightfoldcapital.com](mailto:rwolpert@eightfoldcapital.com) or (305) 503-4054 with any questions or to obtain a copy of these documents.

Eightfold generally does not participate in class actions on behalf of the Funds.

## **Financial Information**

Eightfold has never filed for bankruptcy and is not aware of any financial condition that is expected to affect its ability to manage client accounts.